

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALEXANDER COTE,  
Plaintiff,

v.

OFFICE OF THE CALIFORNIA STATE  
CONTROLLER, et al.,  
Defendants.

**DISCOVERY ORDER**

Case No. 22-cv-04056-HSG (TSH)

Re: Dkt. No. 43

JENNIFER I. SYKES,  
Plaintiff,

v.

OFFICE OF THE CALIFORNIA STATE  
CONTROLLER, et al.,  
Defendants.

Case No. 22-cv-04133-HSG (TSH)

Re: Dkt. No. 32

Plaintiffs in these actions allege that California's Unclaimed Property Law is an unconstitutional taking of property in violation of the state and federal constitutions because it does not compensate claimants for the time value of money during the time it is in the State's possession. Defendants have moved to dismiss both actions under Rule 12(b)(6), contending that Plaintiffs' claims are foreclosed by Ninth Circuit precedent. Those motions remain pending.

After the motions to dismiss were filed, Plaintiffs served Defendants with seven requests for admission and an interrogatory. Defendants' responses are due October 19, 2022. Defendants now ask the Court to stay their obligation to respond to these discovery requests until after the ruling on the pending motions to dismiss, and (if the cases survive) any subsequent case management conference. Plaintiffs oppose.

1 The Court grants Defendants a limited stay. The current motions are pure Rule 12(b)(6)  
2 motions that challenge the complaints on their face. No discovery is necessary to decide these  
3 motions. In fact, discovery would not even be useful for these motions because they challenge the  
4 facial validity of Plaintiffs' claims. Defendants have explained that responding to these discovery  
5 requests would entail some burden, and that burden is unnecessary unless and until the complaints  
6 get past a Rule 12(b)(6) motion.

7 At the hearing Plaintiffs argued that the discovery responses might provide factual  
8 information that could be useful in helping Plaintiffs amend their complaints in the event that  
9 Judge Gilliam dismisses the existing complaints with leave to amend. However, Rule 26(b)(1)  
10 states that "[u]nless otherwise limited by court order, the scope of discovery is as follows: Parties  
11 may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or  
12 defense and proportional to the need of the case . . ." The Court thinks that "claim or defense"  
13 means a claim or defense that is alleged in the case, and that discovery is not permitted to learn  
14 what additional or different claims or defenses a litigant might want to allege. After all, Rule 26  
15 imposes a relevance requirement, and it is impossible to determine what is relevant to claims or  
16 defenses that even the litigants don't know about yet.

17 Accordingly, the Court orders that Defendants' obligation to respond to these discovery  
18 requests is stayed until ten days after Judge Gilliam issues an order holding that either the existing  
19 complaints or later amended complaints in these actions state a claim for which relief can be  
20 granted.

21 For the avoidance of doubt, the Court notes that this order does not apply to *Cole-Kelly v.*  
22 *Yee*, 22-cv-2841. That case has pending motions for class certification and summary judgment –  
23 motions as to which discovery might be relevant. No one has asked the Court to stay any  
24 discovery in that case.

25 **IT IS SO ORDERED.**

26 Dated: October 6, 2022

27   
28 THOMAS S. HIXSON  
United States Magistrate Judge